
STATUTORY INSTRUMENTS

2008 No. 528

The Local Involvement Networks Regulations 2008

PART 3

Transitional arrangements

Relevant time

7. For the purpose of section 228(2) of the Act, the “relevant time”, in relation to a local authority, is the earlier of—

- (a) 30th September 2008; or
- (b) the time when a person first carries on one of the section 221 activities in pursuance of arrangements made under section 221(1) of that Act by that local authority.

Compliance with the temporary duty

8.—(1) A local authority complies with the duty under section 228(2) only if it acts in accordance with the following paragraphs.

(2) The local authority must not make temporary arrangements for any of the following persons to carry on section 221 activities—

- (a) another local authority;
- (b) a National Health Service trust;
- (c) an NHS foundation trust;
- (d) a Primary Care Trust;
- (e) a Strategic Health Authority;
- (f) a person with whom a local authority has made contractual arrangements under section 221(1) of the Act;
- (g) a person who has submitted a tender to the local authority relating to the contractual arrangements to be made by that authority under section 221(1) of the Act.

(3) Paragraph (2)(g) does not apply once the local authority has entered into the contractual arrangements to which the tender relates.

(4) The local authority may not carry on section 221 activities.

(5) The temporary arrangements made by the local authority must include provision requiring that a person who is to carry on section 221 activities in pursuance of the temporary arrangements must—

- (a) before making any relevant decisions, have a procedure for making relevant decisions;
- (b) comply with the procedure referred to in sub-paragraph (a) as may be amended from time to time;

- (c) within a reasonable time after a relevant decision has been made, publish a written statement of that decision and the reasons for that decision; and
 - (d) comply with the requirements about authorised individuals in regulation 9.
- (6) For the purpose of this regulation a “relevant decision” is a decision of a relevant person as to—
- (a) how the relevant person is to undertake the relevant section 221 activities;
 - (b) which care services in relation to which those activities are to be carried out;
 - (c) the spending of amounts in relation to the relevant person’s section 221 activities;
 - (d) whether to request information from a services-provider;
 - (e) whether to refer a report or a recommendation to a services-provider;
 - (f) which premises owned or controlled by a services-provider an authorised individual is to enter and view and when those premises are to be visited;
 - (g) whether to refer a matter to an overview and scrutiny committee of a local authority; or
 - (h) whether to report a matter concerning one or more of the section 221 activities to another person.
- (7) In this regulation “relevant section 221 activities”, in relation to a relevant person, means the section 221 activities that the relevant person is to carry on pursuant to temporary arrangements.

Arrangements for authorised individuals for the purposes of entering and viewing

- 9.—(1) The requirements referred to in regulation 8(5)(d) are that a relevant person must—
- (a) have a procedure for the making of decisions by the relevant person about who may be an authorised individual;
 - (b) comply with the procedure referred to in sub-paragraph (a) as may be amended from time to time;
 - (c) provide each authorised individual with written evidence of that individual’s authorisation;
 - (d) ensure that only an individual to whom paragraph (2) applies may be an authorised individual.
- (2) This paragraph applies to an individual if—
- (a) a criminal records certificate under section 113A of the Police Act 1997 has been obtained in respect of that individual;
 - (b) a person nominated by the relevant person (“nominated person”) has considered that certificate;
 - (c) the nominated person is satisfied that the individual to whom that certificate refers is a suitable person for the purposes of entering and viewing, and observing the carrying-on of activities on, premises owned or controlled by a services-provider.
- (3) For the purposes of paragraph (2), the nominated person must not be the individual to whom the certificate refers.

Duties of services-providers to respond to reports and recommendations by relevant persons

- 10.—(1) Subject to regulation 11, this regulation applies where a relevant person has in the carrying-on of section 221 activities pursuant to temporary arrangements made a report or recommendation to a services-provider.

(2) Where a report or recommendation (whether an original or a copy) is received for the first time by a relevant services-provider that services-provider must within 20 working days beginning with the date of receipt of that report or recommendation—

- (a) acknowledge receipt to the referrer; and
- (b) provide an explanation to the referrer of any action it intends to take in respect of the report or recommendation or an explanation of why it does not intend to take any action in respect of that report or recommendation.

(3) Where a report or recommendation (whether an original or a copy) is received by a services-provider, other than a relevant services-provider, for the first time that services-provider must within 20 working days beginning with the date of receipt of that report or recommendation—

- (a) acknowledge receipt to the referrer;
- (b) provide a copy of the report or recommendation to any other services-provider which appears to it to be a relevant services-provider;
- (c) inform the referrer if no other services-provider appears to it to be a relevant services-provider.

(4) A relevant services-provider is a services-provider who was responsible for commissioning any of the care services to which the report or recommendation relates.

(5) This paragraph applies where the relevant services-providers in respect of a report of recommendation agree that one of those services-providers may act on their behalf in relation to a report or recommendation made by a relevant person in accordance with paragraph (1).

(6) Where paragraph (5) applies—

- (a) the duty in paragraph (2)(b) does not apply; and
- (b) the services-provider acting on behalf of the relevant services-providers must, within 20 working days of the latest date on which the report or recommendation was received by one of those services-providers, provide to the referrer—
 - (i) an explanation to the referrer of any action that any of the relevant services-providers intends to take in respect of the report or recommendation; or
 - (ii) an explanation of why none of the relevant services-providers intends to take any action in respect of that report or recommendation.

(7) If a relevant services-provider receives a report or recommendation from a relevant person it must send a copy of the report or recommendation to any other relevant services-provider which appears to it not to have received that report or recommendation, or a copy of it.

(8) If a relevant services-provider receives a copy of a report or recommendation from a services-provider it must send a copy to any other relevant services-provider which appears to it not to have received a copy of that report or recommendation.

(9) In this regulation—

- (a) “the referrer” means—
 - (i) before the relevant time in relation to the local authority pursuant to whose temporary arrangements the relevant person is carrying-on section 221 activities, the relevant person who made the report or recommendation in accordance with paragraph (1); or
 - (ii) at any other time, a relevant local involvement network;
- (b) “relevant local involvement network” means a person who pursuant to arrangements made under section 221(1) of the Act is to carry on section 221 activities to which the report or recommendation referred to in paragraph (1) relates.

(10) Where a services-provider is required to acknowledge receipt, provide an explanation or inform the referrer, that services-provider must do so in writing.

Excluded services

- 11.**—(1) Regulation 10 does not apply where a report or recommendation relates wholly to—
- (a) excluded activities; or
 - (b) excluded services.
- (2) Where a report or recommendation relates partly to—
- (a) excluded activities; or
 - (b) excluded services,

then regulation 10 applies only to that part of the report or recommendation that does not relate to those activities or services.

(3) In this regulation “excluded services” means services which are not care services in respect of which the relevant person who made the report or recommendation is carrying-on section 221 activities in pursuance of temporary arrangements.

Duty of services-providers to allow entry by local involvement networks

- 12.**—(1) A services-provider must allow an authorised individual to—
- (a) enter and view, and
 - (b) observe the carrying-on of activities on,
- premises that it owns or controls.
- (2) Paragraph (1) does not apply—
- (a) in respect of any premises, or parts of premises, if the presence of an authorised individual on those premises, or those parts of premises, would compromise—
 - (i) the effective provision of care services, or
 - (ii) the privacy or dignity of any person;
 - (b) if the authorised individual does not comply with regulation 14;
 - (c) in respect of excluded premises;
 - (d) to observing the carrying-on of excluded activities;
 - (e) to entering and viewing premises, or parts of premises, for the purpose of observing excluded activities;
 - (f) in respect of any premises, or parts of premises, at any time when care services are not being provided on those premises or parts of premises;
 - (g) if, in the opinion of the services-provider, the authorised individual in seeking to enter and view, and observe the carrying-on of activities on, the premises that the services-provider owns or controls is not acting reasonably and proportionately;
 - (h) if an authorised individual does not provide the services-provider with evidence that the individual is authorised in accordance with regulation 13.
- (3) Where any premises, or parts of premises, are owned by a services-provider and controlled by another services-provider, then for the purpose of this regulation the services-provider who owns those premises, or parts of premises, is to be treated as not being a services-provider.

Authorised individual

13.—(1) An “authorised individual” means an individual who, until the relevant time in relation to the local authority who made the temporary arrangements pursuant to which the relevant person is carrying-on section 221 activities, is authorised for the purposes of regulation 12—

- (a) by a relevant person; and
- (b) in accordance with the requirements to be included in temporary arrangements specified in regulation 9.

Viewing and observing activities

14. While an authorised individual is on any premises as a result of a services-provider having complied with a duty imposed under regulation 12—

- (a) any viewing, or observation, carried out by the individual must be carried out for the purposes of the carrying-on of activities under temporary arrangements;
- (b) the authorised individual must not act in any way that compromises—
 - (i) the effective provision of care services; or
 - (ii) the privacy or dignity of any person.

Transitional reports

15.—(1) Each relevant person must prepare a report (“a transitional report”) setting out—

- (a) the section 221 activities that that person has carried on in pursuance of temporary arrangements made by the relevant local authority;
- (b) details of the amount spent by the relevant person in respect of the activities referred to in sub-paragraph (a); and
- (c) details of what those amounts referred to in sub-paragraph (b) were spent on.

(2) The transitional report must be prepared within 2 months of the date on which the relevant person ceases to carry on section 221 activities pursuant to temporary arrangements made by the relevant local authority.

(3) A relevant person must provide a copy of the transitional report to—

- (a) a Host,
- (b) the appropriate local authority, and
- (c) the Secretary of State,

within 3 months of the date on which the relevant person ceases to carry on section 221 activities pursuant to temporary arrangements made by the relevant local authority.

(4) In this regulation—

“appropriate local authority” means the local authority who made the temporary arrangements pursuant to which the relevant person was carrying on section 221 activities;

“Host” means a person with whom the appropriate local authority has made arrangements under section 221(1) of the Act.

Relevant persons: referrals of social care matters

16.—(1) Paragraphs (2) to (6) apply where a relevant person refers a matter relating to social care services to an overview and scrutiny committee of a local authority.

(2) The committee must—

- (a) acknowledge receipt of the referral within 20 working days beginning with the date on which the referral to which the duty applies was made; and
- (b) keep the referrer informed of the committee’s actions in relation to the matter.

(3) The committee must decide whether or not any of its powers is exercisable in relation to the matter referred.

(4) If the committee concludes that any of those powers is exercisable in relation to the matter, the committee must decide whether or not to exercise that power in relation to the matter.

(5) The committee, in exercising any of those powers in relation to the matter, must take into account any relevant information provided by a relevant person.

(6) In paragraph (2), from the relevant time in relation to the local authority which made the arrangements pursuant to which the relevant person made the referral, “referrer” means a relevant local involvement network.

(7) In this regulation—

(a) “a relevant local involvement network” means a person who pursuant to arrangements made under section 221(1) of the Act is to carry on section 221 activities to which the matter referred in paragraph (1) relates to;

(b) a matter is referred by a “relevant person” if the referral is made by a person in carrying on section 221 activities in pursuance of temporary arrangements.